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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 In re:
11 GIGA WATT, Inc., a Washington
12 corporation,
13 Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

**TRUSTEE'S REPLY TO
OBJECTION / OPPOSITION OF
"PERKINS GROUP" TO MOTION
FOR CONTEMPT AND
SANCTIONS**

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1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Matter of Plunkett*, 60 B.R. 290 (Bankr. S.D.N.Y. 1986)3

4 **RULES**

5 Fed.R.Bank.P. 70044

6 L.B.R. 2002-15

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1 Mark D. Waldron, as Chapter 7 Trustee, hereby replies to the Perkins
2 Group's opposition to the Trustee's Motion for Contempt.

3 **I. INTRODUCTION**

4 No matter how much the Perkins Group disagrees with the Automatic Stay
5 Order and Preliminary Injunction Order, Court Orders have to be obeyed.

6 Perkins has a track history in this case of crossing boundaries. When
7 Perkins misrepresented the law to the District Court, the Trustee asked the District
8 Court to "check" Perkins. The District Court did so, rebuking Perkins for
9 mischaracterizing the law. *Order Denying Motions and Appeals*, Case No. 2:21-
10 cv-00159, January 7, 2022, ECF No. 21. That did not work.

11 Secondly, Perkins mischaracterized the facts by withholding from the
12 Trustee correspondence showing an attorney-client relationship with the Debtor.

13 And now the Perkins Group has violated the Automatic Stay Order and
14 Preliminary Injunction Order. It is claiming that the Orders need to be revised,
15 essentially, because they expose Perkins to multiple liability. But this is not true.
16 The Court set forth a road map for litigating this case which protects Perkins from
17 inconsistent results and double exposure as set forth in the *Trustee's Reply to*
18 *Objection / Opposition of "Perkins Group" to Motion to Dismiss Third-Party*
19 *Complaint* ("Reply"), which is incorporated by reference as if set forth fully
20 herein.

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1 Also, Perkins is pretending that the First Amended Complaint alleges for
2 the first time that the GW ICO escrow was a trust and that if Perkins had only
3 known the Trustee's true intentions, it would have objected to the Automatic Stay
4 Order and Preliminary Injunction. This is not true. The parties litigated the issue
5 of whether the Trustee was alleging a trust or a contract, as described in the Reply
6 and not repeated here. The Court entered an Order in the Trustee's favor. The trust
7 issue is not new. It is old.

8 As a sanction, the Trustee has requested an accruing fine, not as
9 punishment, but to coerce the Perkins Group into compliance.

10 Furthermore, Perkins consented to service by electronic notice and its
11 lawyers appearing before this Court subject themselves to censure for violating
12 Court Orders, as occurred here.

13 II. ARGUMENT

14 A. These issues are not complicated

15 The Perkins Group's arguments contradict the following fundamental rules
16 that are known or should be known by anyone practicing in the Bankruptcy Court:
17 (1) stayed claims are void; (2) claims that belong to the estate cannot be asserted
18 anywhere by anyone other than the trustee; (3) the automatic stay applies
19 worldwide without the need for a specific, separate order; (4) federal law,
20 particularly the Bankruptcy Code's automatic stay, prevails over conflicting state

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1 law pursuant to the Supremacy Clause of the United States Constitution; and (5)
2 Court Orders cannot be collaterally attacked.

3 This is not a case where no order was entered and a party mistakenly but in
4 good faith thought the automatic stay did not apply. Here, the Court expressly
5 held that Mr. Dam's claims of an interest in the GW ICO escrow were stayed.
6 "Once actually notified of the automatic stay, all persons act at their peril in taking
7 acts directed at any property which may be property of the estate." *Matter of*
8 *Plunkett*, 60 B.R. 290, 293 (Bankr. S.D.N.Y. 1986).

9 The Perkins Group also turns the Preliminary Injunction Order on its head.
10 They argue that it did not prevent Mr. Dam from asserting his consumer
11 protection act claims in this Court. It ignores the provision in the Order providing
12 that the Trustee's claims against Perkins would be decided first in this Court. The
13 Court would send its Report and Recommendation to the District Court which
14 would then have the benefit of this Court's findings and conclusions while
15 deciding Mr. Dam's case. *Order Denying Mr. Dam's Motion to Dismiss and*
16 *Granting Trustee's Motion for Preliminary Injunction*, Case No. 21-80053-FPC,
17 February 23, 2022, ECF No. 39 at 3.

18 One does not need to be an expert in bankruptcy law to understand the
19 terms.

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1 **B. Sanctions are needed to coerce the Perkins Group into compliance with**
2 **this Court's orders**

3 The record contradicts Perkins assertion that the Trustee's trust claim is
4 new. Even if it were, Perkins did not have the right to join Mr. Dam in violation of
5 this Court's Orders.

6 The proposed sanction of \$1,000 per day intends to coerce the Perkins
7 Group into complying with the Automatic Stay Order and Preliminary Injunction
8 Order. As soon as Perkins withdraws the Third Amended Complaint, the fine
9 would stop accruing. Therefore, it is not punitive.

10 When Perkins misrepresented the law to the District Court on appeal of this
11 Court's decision that the Trustee's claims sounded in equity because they alleged
12 that the GW ICO escrow was a trust, the Trustee thought that a verbal reprimand
13 would suffice. The District Court "sternly warned" Perkins. It did not work.

14 **C. This Court has personal jurisdiction over the Perkins Group**

15 This Court acquired personal jurisdiction over Perkins when the Trustee
16 mailed the Verified Complaint by first class mail in compliance with
17 Fed.R.Bank.P. 7004. Certificate of Service, ECF No. 14.

18 Personal jurisdiction is not divided between the main case and an adversary
19 proceeding. In addition, Perkins made a general appearance in the automatic stay
20 litigation when it informed the Court that it was not taking a position regarding
21 ownership of the claims to an interest in the GW ICO escrow. *Statement and*

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1 *Objections of Perkins Coie, LLP to Motion for Order to Show Cause*, ECF No.
2 893.

3 By registering with the ECF system, Perkins consented to service by email.
4 L.B.R. 2002-1(b)(3). And the Court has jurisdiction to sanction attorneys who
5 appear before it.

6 Finally, the Trustee will mail the sanctions papers to the Perkins Group on
7 January 11, 2023, thus remedying any defect in service.

8 **III. CONCLUSION**

9 The Perkins Group is not entitled to ignore the law, the facts, and the
10 Court's Orders. Yet, it has done all of that. A rebuke from the District Court made
11 no dent in the Perkins Group's conduct. Stronger measures are needed.

12 WHEREFORE, the Trustee requests an Order finding that the Perkins
13 Group is in contempt and sanctioning the members of the Perkins Group by:

14 1. Holding the Perkins Group in contempt of the Automatic Stay Order
15 and Preliminary Injunction;

16 2. Requiring Perkins Coie LLP, Lowell Ness, Brynes Keller Cromwell
17 LLP, Ralph E. Cromwell, Jr., and Joffrey McWilliam, jointly and severally, to pay
18 to the estate \$1,000 per day from the date they filed the Third-Party Complaint
19 (December 7, 2022) to the date the Third-Party Complaint is dismissed with
20 prejudice; and

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1 3. Granting such other and further relief as the Court deems equitable
2 and just.

3 Dated: January 10, 2023 POTOMAC LAW GROUP PLLC

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